

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

08-CR-6259L

v.

OMARI GRAHAM,

Defendant.

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Defendant, Omari Graham (“Graham”), was convicted after a jury trial of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). The jury returned its verdict on July 14, 2011, and sentencing is scheduled for October 6, 2011.

Graham now moves, by counsel, (Dkt. #86), pursuant to FED. R. CRIM. P. 29(c) to set aside the jury verdict and enter a judgment of acquittal. The Government has responded in opposition (Dkt. #87) to the motion.

Graham’s motion is in all respects denied. The principal issue before the jury was whether Graham knowingly possessed the firearm in question that was recovered from a yard relatively close to where Graham was arrested. In my view, there clearly was sufficient evidence that a reasonable juror could find guilt beyond a reasonable doubt.

The Government set forth in its response a detailed summary of the evidence. That summary is an accurate rendition of the facts. They reflect that Graham led police on a high speed chase after having been pulled over for a traffic stop; that he fled the vehicle after it crashed and took a path through a suburban neighborhood where he was finally apprehended. Within feet of that path, the firearm in question was discovered. It was an entirely reasonable inference for the jury to conclude that it was Graham who discarded that firearm as he fled from the police and was about to be apprehended. There really was no other logical explanation as to how this firearm happened to

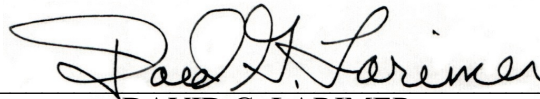
appear underneath the motor vehicle in the dead of night in this suburban Rochester neighborhood. It was entirely reasonable for the jury to conclude, based on all the facts and circumstances surrounding defendant's flight and apprehension, that it was he who tossed the firearm in an effort to avoid detection as he was about to be arrested.

In sum, there was substantial compelling circumstantial evidence that it was Graham that possessed the firearm in question just before he was arrested. Arguments were made by counsel at the time of trial, and the jury certainly was entitled to accept the inferences posited by the Government and reject the inferences put forward by the defendant. In sum, the evidence was more than sufficient to support the verdict and, therefore, defendant's motion must be, and hereby is, denied.

#### CONCLUSION

Defendant's motion (Dkt. #86) pursuant to FED. R. CRIM. P. 29(c) to set aside the jury verdict and enter a judgment of acquittal is in all respects denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
August 12, 2011.